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RICHARD H. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
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1 Gregory L. Brown
2 J-82241
3 P.O. Box 5246
4 CORCORAN, CA 93212
5 In PRO SE

6 ORIGINAL
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8 United States District Court (PR)
9 Northern District of California MMC
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11
12 Gregory L. Brown,
13 Petitioner,

CV 08 3501

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17 V.
18
19 Ken Clark, Warden,
20 Respondent.

21
22 GREG'S DECLARATION AND
23 MEMORANDUM IN SUPPORT
24 OF GOOD CAUSE TO FILE A
25 LATE PETITION FOR WRIT OF
26 HABEAS CORPUS DUE TO
27 NEWLY DISCOVERED EVIDENCE
28 AND A CLAIM OF ACTUAL
INNOCENCE

22 Declaration of Gregory L. Brown

23 I, Gregory L. Brown, declare that:

24 1.) I am the petitioner in the above entitled-
25 action. I make this declaration in support of
26 good cause to file a late petition for writ of
27 habeas corpus due to newly discovered evidence.

1 2.) In early 2007, after years of continuous
2 and vigorous review and analysis of the court and
3 reporter's transcripts, I learned that my right to
4 a fair trial and due process, as guaranteed under
5 the Fifth, Sixth, and Fourteenth Amendments of the
6 United States Constitution, was violated as a result
7 of ineffective assistance of trial counsel; ineffective
8 assistance of appellate counsel; and prosecutorial
9 misconduct. Immediately upon knowledge thereof,
10 on April 26, 2007, I filed a state petition for writ of
11 habeas corpus in Superior Court of San Francisco in
12 California regarding those claims and others. (SEE:
13 Exhibit - A; an exact copy of the petition.) On May 30,
14 2007, the petition was denied. (SEE: Exhibit - B; an
15 exact copy of the denial.) On June 29, 2007, I filed
16 the petition with the Court of Appeal of the State of
17 California. (SEE: Exhibit - C; an exact copy of the
18 petition.) On July 5, 2007, the petition was denied.
19 (SEE: Exhibit - D; an exact copy of the denial.) On
20 August 10, 2007, I filed the petition with the
21 Supreme Court of California. On January 30, 2008,
22 the petition was denied. (SEE: Exhibit - F; an exact
23 copy of the denial.) Therefore, all claims were exhausted.

24 3.) These papers, as well as the accompanying
25 petition for writ of habeas corpus, will demonstrate
26 (1) that I am actually innocent of and have always
27 maintained my innocence and non-involvement in the
28 conspiracy to commit murder and attempted murder

1 of Robin Williams; (2) that the trial record is devoid
2 of EVEN A PARTICLE of evidence connecting me to the
3 crimes charged; and (3) that my wrongful and
4 unlawful convictions, and continuous INCARCERATION,
5 ARE A DIRECT RESULT of PROSECUTORIAL misconduct AND
6 defective AND INEFFECTIVE TRIAL AND APPELLATE
7 REPRESENTATION. For example, during closing arguments,
8 the prosecutor not only failed to limit the scope of his
9 closing arguments to the "evidence" presented at trial,
10 but he also deliberately and maliciously argued
11 NUMEROUS "false and unsupported material statements
12 that rest exclusively on the ISSUE of guilt." The
13 prosecutor also repeatedly exhorted the jury to bring
14 in a "guilty" verdict, in spite of the non-supportive
15 evidence. Trial counsel not only failed to object to
16 the prosecutor's false and unsupported material
17 statements, but also failed to challenge questionable
18 manufactured overt acts regarding the conspiracy
19 charge, and failed to use a preemptory challenge to
20 remove an admitted bias juror from the jury panel.
21 Appellate counsel failed to raise the following
22 NON-FRIVOLOUS CLAIMS ON APPEAL: 1.) INEFFECTIVE
23 ASSISTANCE of trial COUNSEL; 2.) PROSECUTORIAL
24 misconduct; 3.) GREG's convictions ARE BASED ON LESS
25 THAN PROOF BEYOND A REASONABLE doubt of every ELEMENT
26 of the crimes charged; and 4.) JUROR GAVE FALSE
27 ANSWERS/STATEMENTS during voir dire. The latter two
28 claims are also RAISED in THESE PAPERS and the petition.

1 Additionally, THESE PAPERS AND THE PETITION WILL SHOW
 2 CLAIMS OF FUNDAMENTAL MISCARRIAGE OF JUSTICE AND
 3 CONSTITUTIONAL ERRORS AND THE CAUSE AND PREJUDICES
 4 ASSOCIATED WITH THEM; AND THAT THE FEDERAL COURTS
 5 HAVE JURISDICTION OVER THE CLAIMS.

6 4.) THE FOREGOING FACTUAL ALLEGATIONS CREATE A
 7 GENUINE ISSUE OF FACT AS TO WHETHER FUNDAMENTAL
 8 CONSTITUTIONAL ERRORS CAUSED MY CONVICTION OF
 9 CONSPIRACY TO COMMIT MURDER AND ATTEMPTED
 10 MURDER, AND THEREFORE, JUSTIFY MY FILING OF A
 11 LATE PETITION FOR WRIT OF HABEAS CORPUS DUE TO NEWLY
 12 DISCOVERED EVIDENCE AND A CLAIM OF ACTUAL INNOCENCE
 13 AND MY ENTITLEMENT TO THE RELIEF REQUESTED THEREIN;
 14 AS EXPLAINED IN THE ATTACHED MEMORANDUM.

15 5.) I DECLARE UNDER PENALTY OF PERJURY THAT
 16 THE FOREGOING IS TRUE AND CORRECT.

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 18 Memorandum In Support Of Good Cause To File
 19 A Late Petition For Writ Of Habeas Corpus Due To
 20 Newly Discovered Evidence And A Claim of Actual Innocence

21 Introduction

22 IN EARLY 2007, GREG LEARNED THAT HIS RIGHT TO
 23 A FAIR TRIAL AND DUE PROCESS, AS GUARANTEED UNDER
 24 THE FIFTH, SIXTH AND FOURTEENTH AMENDMENT OF THE
 25 UNITED STATES CONSTITUTION, WAS VIOLATED AS A RESULT
 26 OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL; INEFFECTIVE
 27 ASSISTANCE OF APPELLATE COUNSEL; AND PROSECUTORIAL
 28 MISCONDUCT. IMMEDIATELY UPON KNOWLEDGE THEREOF,

1 ON April 26, 2007, GREG filed a state petition for
2 writ of habeas corpus in Superior Court of San
3 Francisco in California which set forth the following
4 grounds: (1) Ineffective assistance of trial counsel;
5 (2) Ineffective assistance of appellate counsel;
6 (3) Prosecutorial misconduct; (4) His conviction rest
7 on less than proof beyond a reasonable doubt of
8 every element of the crimes charged; and
9 (5) JUROR GAVE INTENTIONALLY FALSE ANSWERS AND
10 misleading statements during voir dire. (SEE:
11 Exhibit-A; AN EXACT copy of the petition.) On May 30,
12 2007, the petition was denied.) (SEE: Exhibit-B;
13 AN EXACT copy of the denial.) On June 29, 2007,
14 I filed the petition with the Court of Appeal of
15 the State of California. (SEE: Exhibit-C; AN EXACT
16 copy of the petition.) On July 5, 2007, the petition
17 was denied. (SEE: Exhibit-D; AN EXACT copy of the
18 denial.) On August 10, 2007, I filed the petition
19 with the Supreme Court of California. (SEE:
20 Exhibit-E; AN EXACT copy of the petition.)
21 On January 30, 2008, the petition was denied.
22 (SEE: Exhibit-F; AN EXACT copy of the denial.)

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4 ARGUMENT5 Point I
67 Good Cause Exists For Greg's Filing Of
8 A Late Petition For Writ Of HABEAS CORPUS
9 BECAUSE The Petition Contains Newly
10 DISCOVERED Evidence And A Claim Of
Actual INNOCENCE11
12 Greg is entitled to file a late petition for
13 writ of habeas corpus.14 Equitable tolling applies to this action because
15 Greg has always maintained his innocence and
16 non-involvement in the conspiracy to commit murder
17 and attempted murder of Robin Williams, and the
18 petition contains newly discovered evidence that
19 proves his actual innocence and shows the
20 ineffective assistance of trial counsel; the
21 ineffective assistance of appellate counsel; and
22 the prosecutorial misconduct that caused his
23 unlawful and wrongful convictions.24 A. Prosecutorial Misconduct
2526 During trial, Prosecutor Floyd Andrews'
27 (hereinafter "Andrews") use of false and
28 unsupported material statements in his "Closing

1 Arguments" WERE SO IMPROPER THAT IT INFECTED THE
 2 TRIAL WITH UNFAIRNESS AS TO MAKE GREG'S CONVICTION
 3 OF CONSPIRACY TO COMMIT MURDER AND ATTEMPTED
 4 MURDER OF ROBIN WILLIAMS A DENIAL OF DUE PROCESS
 5 AND A FAIR TRIAL. IN CLOSING, ANDREWS TOLD THE
 6 JURY THAT WANDA FAIN WROTE THE NOTE "FOR GREGORY
 7 BROWN," (RT 1349.)¹ AND "... HE (GREG) CAN
 8 GET HER (ROBIN WILLIAMS) OUT TO JERROLD AVENUE AND
 9 SHOOT HER AND LEAVE HER DEAD THROUGH THE OTHER TWO
 10 (WANDA FAIN AND JOSEPH DIGGS)." (RT 1349.)

11 ANDREWS FURTHER REPEATEDLY EXHORTED THE JURY TO
 12 BRING IN A "GUILTY" VERDICT, NOT BASED ON THE
 13 EVIDENCE, BUT "BECAUSE THEY DID IT." (RT 1350.)
 14 THE TRIAL RECORD IS DEVOID OF ANY EVIDENCE TO SUPPORT
 15 ANY OF THOSE ACCUSATIONS. THERE WAS NO EVIDENCE
 16 INTRODUCED AT TRIAL THAT SHOWED FAIN WROTE THE NOTE
 17 "FOR GREGORY BROWN." THERE WAS NO EVIDENCE
 18 INTRODUCED AT TRIAL THAT SHOWED GREG HAD ANY
 19 CONNECTION TO THE TRIP THAT FAIN, DIGGS AND WILLIAMS
 20 TOOK TO JERROLD AVENUE. THERE WAS NO EVIDENCE
 21 INTRODUCED AT TRIAL FROM WHICH A RATIONAL INFERENCE
 22 MAY BE MADE THAT GREG AGREED WITH FAIN, DIGGS OR
 23 ANYONE ELSE TO TAKE ROBIN WILLIAMS' LIFE, OR TO DO
 24 HER ANY HARM AT ALL. AND NOWHERE IN THE TRIAL

25
 26 1 ALL REPORTER'S/CLERK'S TRANSCRIPTS REFERRED
 27 TO IN THESE PAPERS CAN BE FOUND IN EXHIBIT - G
 28 ATTACHED HERETO.

1 RECORDED IS THERE ANY EVIDENCE AS TO WHO ACTUALLY
 2 SHOT WILLIAMS.

3 AS DEMONSTRATED ABOVE, NOT ONLY DID ANDREWS
 4 FAILED TO LIMIT THE SCOPE OF HIS CLOSING ARGUMENTS
 5 TO THE EVIDENCE PRESENTED AT TRIAL BUT HE ALSO
 6 DELIBERATELY AND CONSCIOUSLY INTRODUCED NUMEROUS
 7 FALSE AND UNSUPPORTED MATERIAL STATEMENTS WHICH
 8 RESTED EXCLUSIVELY ON THE ISSUE OF GUILT. ADDITIONALLY,
 9 ANDREWS' EXHORTATIONS OF THE JURY TO BRING IN A
 10 "GUILTY" VERDICT, BY ANY MEANS OTHER THAN THE
 11 EVIDENCE, "BECAUSE THEY DID IT" AMOUNT TO MALICIOUS
 12 PROSECUTION AND SEVERAL INSTANCES OF PROSECUTORIAL
 13 MISCONDUCT BECAUSE: (1) IT WAS CONTRARY TO THE
 14 EVIDENCE PRESENTED AT TRIAL; (2) IT WAS AN INJECTION
 15 OF HIS PERSONAL OPINION OR BELIEF; (3) IT INFLUENCED
 16 AND INFLAMED THE JURY'S PREJUDICES AGAINST GREG;
 17 (4) IT ENCOURAGED THE JURY TO DISREGARD THE COURT'S
 18 INSTRUCTIONS CONCERNING INNOCENCE AND GUILT; AND
 19 (5) IT DIVERTED THE JURY'S ATTENTION FROM ITS DUTY
 20 TO DECIDE THE CASE ON THE MERIT OF THE EVIDENCE
 21 PRESENTED AT TRIAL.

22 BUT, JUST AS EQUALLY PREJUDICIAL, IT NEGATED THE
 23 FACT THAT OTHER PEOPLE COULD HAVE BEEN RESPONSIBLE
 24 FOR THE SHOOTING OF ROBIN WILLIAMS. ON CROSS-EXAMINATION,
 25 WILLIAMS WAS QUESTIONED ABOUT VARIOUS PERSONS WHO
 26 MIGHT BEAR A GRUDGE TOWARD HER. IN JANUARY 1994,
 27 JUST A YEAR PRIOR TO HER SHOOTING, ROBIN WILLIAMS
 28 WAS CONVICTED OF A RESIDENTIAL BURGLARY, AND NAMED

1 three black males who were also involved. (RT 573,
2 587-588, 641.) After that burglary, Corky, the
3 boyfriend of the woman whose house she had burglarized
4 beat her up. (RT 583.) Williams had also incurred
5 drug debts in the past. (RT 576, 580.) However,
6 she denied having any drug debts on February 7, 1995,
7 and did not remember ever being threatened by
8 drug dealers to whom she owed money. (RT 576, 580,
9 582.) She said that she knew Irwin Berry at
10 Sunnydale, but did not remember him hitting her
11 with a gun because of some debts she owed him.
12 (RT 582.) She specifically denied owing any money
13 to a man named "Tails" from the Sunnydale Area,
14 and said that she did not remember him coming up
15 to her the night before February 7, 1995 and
16 pointing a gun at her. (RT 581-582.) However,
17 Dafnie Hayes testified that she was talking on the
18 telephone with a friend at her home in the Sunnydale
19 Projects on the afternoon of February 6, 1995 when the
20 friend said, "Oh, my God, Tails pulled a gun on Robin."
21 Robin referred to Robin Williams. (RT 1005.) Hayes also
22 testified that sometime during the last couple of
23 months Phoebe's apartment at 56 Santos had caught
24 on fire. Williams and Phoebe were once roommates
25 at 56 Santos. (RT 1005-1006.) Over the years,
26 Williams had gotten into fights at Sunnydale.
27 (RT 584-585.) Williams admitted that she might
28 have some enemies around the city. (RT 586.)

1 Andrews' false and unsupported material
 2 statements implanted in his closing arguments, whether
 3 individually or collectively, so infected the trial
 4 outcome as to create a genuine effect on the jury's
 5 verdict, especially when considering the fact that the
 6 trial judge did not instruct the jury to disregard
 7 the improper statements.

8 Prosecutor Andrews' intentional and malicious
 9 use of false and deceitful material statements in his
 10 "Opening Statements" at trial were so improper that
 11 they infected the trial with unfairness as to make
 12 Greg's resulting convictions a denial of due process
 13 and a fair trial. Andrews' opening statements alleged,
 14 "She (Robin Williams) was shot because she made a
 15 statement to the police about Gregory Brown,
 16 about him selling drugs, about him having a gun.
 17 She was shot to punish her for that statement and
 18 to prevent her from testifying in future court
 19 appearances." (RT 314.) Andrews failed to
 20 introduce any evidence at trial to support any of
 21 those accusations, and Robin Williams' trial
 22 testimony totally contradicted Andrews' improper
 23 statements while exonerating Greg on all charges
 24 relating to her shooting.

25 Williams testified at trial that on January 6,
 26 1995, she was visiting Greg at 126 Blythdale, when
 27 the police came. She saw a gun in Greg's hand, and
 28 a bag of crack in the other. (RT 511.) She made a

1 statement to the police as to what she saw. (RT 513.)
 2 Some days later she was at a friend's house when
 3 Wanda "FAIN" delivered a note to her, that included
 4 a photo of her taken some years before by GREG.
 5 GREG was nearby when the note was delivered,
 6 standing outside on a porch. (RT 515.) FAIN said GREG
 7 wanted to talk to her. (RT 517.) She did not speak
 8 to GREG because she considered the note threatening
 9 and was scared. (RT 518.) About a week and a half
 10 later, she met GREG on the street and they spoke.
 11 He asked her to stay out of sight, and not to testify
 12 at his upcoming hearing, and in return he "would
 13 take care of" her as long as she didn't testify.
 14 (RT 519.) She was satisfied with the conversation
 15 and returned to her regular visits to 126 Blythdale,
 16 going there about every other day. She went there
 17 to talk to GREG and they were friends. (RT 520.)
 18 GREG NEVER threatened her, and she believed he
 19 had no intention of hurting her. (RT 557.)

20 Andrews was aware that Williams would testify
 21 as she did, because it was relatively a recital of
 22 her preliminary hearing testimony. (RT 11-16; 51-52.)
 23 Nevertheless, Andrews deliberately, consciously and
 24 maliciously used false and deceitful material
 25 statements in his opening statements to manipulate
 26 the jury. This fact is highlighted by Andrews'
 27 calculated (and successful) efforts to paint

1 GREG AS A HEARTLESS dope dealer who has previously
2 captured and corrupted the victim, Robin Williams.
3 Thus, for example, in his opening statements
4 Andrews said:

5 "Robin is going to tell you that she is addicted
6 to COCAINE, that she had been supplied
7 COCAINE by GREGORY BROWN AND OTHER PEOPLE
8 That she did a lot of things to
9 get HER poison. She'd go to GREGORY
10 BROWN AND GET DRUGS THERE. SHE'S TRADED
11 DRUGS FOR SEX WITH MR. BROWN."

12 (RT 315, line 28. 316, line 1-7.) Of course, THERE WAS
13 NO EVIDENCE Adduced AT trial to support this
14 ASSERTION.

15 Absent the deceitful, false and/or unsupported
16 material statements embedded in Prosecutor Andrews'
17 Closing Arguments and Opening Statements, THERE IS
18 ABSOLUTELY NO WAY A RATIONAL jury could have found
19 GREG guilty of the crimes charged because THERE WAS
20 SIMPLY NO EVIDENCE INTRODUCED AT trial CONNECTING
21 him to the shooting of Robin Williams. The IMPROPER
22 STATEMENTS, undoubtedly, CREATED SUCH A SUBSTANTIAL
23 AND INJURIOUS EFFECT ON THE JURY'S DECISION AS TO
24 RENDER GREG'S CONVICTIONS UNCONSTITUTIONAL.
25 Additionally, the IMPROPER STATEMENTS HAVE LONG BEEN
RECOGNIZED AS PROSECUTORIAL MISCONDUCT:

26 "A LAWYER SHALL NOT . . . STATE A PERSONAL
27 OPINION AS TO . . . THE CREDIBILITY OF A
28 WITNESS . . . OR THE GUILT OR INNOCENCE OF

1 AN ACCUSED." Model Rules of Professional
 2 Conduct, Rule 3.4(e) (1984); SEE ALSO
 3 Code of Professional Responsibility,
 4 DR 7-106(c)(4)(1980); ABA Standards
 for Criminal Justice: 3-5.8(b) (2d ed. 1980).

5 "The prosecutor should ~~refrain~~ from
 6 ARGUMENT which would divert the jury
 7 from its duty to decide the CASE ON THE
 8 EVIDENCE, by injecting ISSUES broader
 9 THAN THE GUILT OR INNOCENCE OF THE ACCUSED
 10 UNDER THE CONTROLLING LAW, OR BY MAKING
 11 PREDICTIONS OF THE CONSEQUENCES OF THE
 12 JURY'S VERDICT." ABA Standard for
 13 Criminal Justice 3-5.8(d) (2d ed. 1980);
 14 Cf. Model Rules of Professional Conduct,
 15 Rule 3.4(e); Code of Professional
 Responsibility, DR 7-106(c)(7); ABA
 Standards for Criminal Justice 3-6.1(c)
 (2d ed. 1980).

16
 17 "The prosecutor should not use arguments
 18 calculated to inflame the passions or
 19 prejudices of the jury." ABA Standards
 20 for Criminal Justice 3-5.8(c) (2d ed.
 21 1980); SEE BERGER V. UNITED STATES,
 22 295 U.S. 78, 88 (1935).

23 When a claim of prosecutorial misconduct is
 24 raised, the relevant question is whether the prosecutor's
 25 comments "so infected the trial with unfairness as
 26 to make the resulting conviction a denial of due process."
 27 DONNELLY V. DECHRISTOFORO, 416 U.S. 637 (1974).
 28 Moreover, the appropriate standard of review for

1 such a claim on writ of habeas corpus is "the narrow
 2 core of due process, and not the broad exercise of
 3 supervisory power." Id. at 642. (citing, DARDEN
 4 V. WAINWRIGHT, 477 U.S. 168, 181.) A defendant's
 5 due process rights ARE violated when a prosecutor's
 6 comments RENDER A trial fundamentally unfair.
 7 SEE *id.*; Smith V. Phillips, 455 U.S. 209, 219 (1982)
 8 ("the touchstone to due process analysis in cases of
 9 alleged prosecutorial misconduct is the fairness of
 10 the trial, not the culpability of prosecutor").

11 The state court failed to address Greg's
 12 prosecutorial misconduct claim. The state court's
 13 failure to recognize constitutional errors constitute
 14 an unreasonable application of clearly established
 15 federal law. SEE, E.G. Idaho V. Wright, 497 U.S.
 16 805, (1990). The state court must "clearly and
 17 expressly state [i] that its judgment rests on a state
 18 procedural bar" in order for federal review to be
 19 precluded. HARRIS V. REED, 489 U.S. 255, 263
 20 (1989) (internal quotations omitted).

21 ARGUENDO, EVEN if there is some sort of
 22 procedural default, it is excused based on the
 23 "Miscarriage of Justice" and/or the "Fundamental
 24 Constitutional Error" and/or the "Cause and Prejudice"
 25 exceptions. The federal court has to consider a
 26 habeas corpus petition if there is a claim of
 27 fundamental miscarriage of justice. Schlup V.
 28 DELO, (1995) 513 U.S. 298, . In Schlup V.

1 Delo, the Supreme Court held that procedurally
 2 barred claims can be heard on the merits if it is
 3 more likely than not that no reasonable juror would
 4 have convicted the petitioner in light of the new
 5 evidence. Also, see: Murray V. Carrier, 477 U.S.
 6 478, (1986). In Brechit V. Abrahamson,
 7 the Supreme Court held that errors are not
 8 harmless when they have a "substantial and
 9 injurious effect or influence in determining the jury's
 10 verdict." Brechit V. Abrahamson, 507 U.S. 619,
 11 637 (quoting Kotterakos V. United States, 328 U.S.
 12 750, 776 (1946)). See, also, California V. Roy,
 13 519 U.S. 2 (1996), reh'g denied, 519 U.S. 1071 (1997)
 14 (holding that errors in writing of pertinent jury
 15 instructions was not harmless). Indeed, federal
 16 courts can still reach the merits of a federal claim
 17 if the petitioner can show "cause and prejudice."¹¹
 18 Coleman V. Thompson, 501 U.S. 722, 749 (1991);
 19 Reed V. Ross, 468 U.S. 1, 11 (1984); Engle V.
 20 Isaac, 456 U.S. 107, 129 (1983); Wainwright V. Sykes,
 21 433 U.S. 72, 87 (1977).

22 Here, Greg has shown umpteen acts of
 23 prosecutorial misconduct including but not limited
 24 to the prosecutor's use of false and unsupported
 25 material statements during his "closing arguments"
 26 at trial, and has demonstrated the prejudicial
 27 effects of those wrongful acts and statements which
 28 caused or contributed to Greg's unlawful

1 convictions. An attorney's actions or omissions can
 2 be so sufficiently egregious as to amount to the sort
 3 of "extraordinary circumstances" that would justify
 4 the application of equitable tolling. Spitsyn V.
Moore, 345 F.3d 796, 800 and f.n. 1, 801-02 (9th
 5 Cir. 2003); Baldayague V. United States, 338 F.3d
 6 145, 153 (2nd Cir. 2003); United States V. Wynn,
 7 292 F.3d 226, 230 (5th Cir. 2002).

8 GREG was constitutionally represented by counsel
 9 during trial and on direct appeal and neither
 10 counsel indicated that a prosecutorial misconduct
 11 claim existed; it was only through continuous and
 12 vigorous review and analysis of the court transcripts
 13 did the prosecutorial misconduct claim materialized.
 14 In fact, GREG's trial counsel rendered constitutionally
 15 ineffective assistance of counsel by not objecting to
 16 the prosecutor's improper material statements at trial.
 17 GREG has always maintained his innocence and
 18 non-involvement in the conspiracy to commit murder
 19 and attempted murder of Robin Williams, and the
 20 trial record is without a particle of evidence
 21 connecting him to the shooting. THEREFORE, GREG
 22 is entitled to equitable tolling because his
 23 prosecutorial misconduct claim is newly discovered
 24 evidence that establishes a credible claim of
 25 actual innocence and a claim of fundamental
 26 constitutional error.

1
2 As illustrated, Greg's right to a fair trial and
3 due process, under the Fifth and Fourteenth Amendments
4 of the United States Constitution, were violated as a
5 result of several instances of prosecutorial misconduct.

6 Based on the above, the Court must grant Greg
7 equitable tolling on this claim, and any other relief
8 the Court deems fair and just.

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16 B. Ineffective Assistance Of Trial Counsel

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19 Greg's trial counsel's failure to make meritorious
20 objections to each and every one of the prosecutor's
21 false and unsupported material statements during
22 trial amount to ineffective trial representation.

23 As demonstrated above, under "A. Prosecutorial
24 Misconduct," Prosecutor Andrews told the jury that
25 Wanda Fain wrote the note "for Gregory Brown," (RT
26 1349.) and "... he (Greg) can get her (Robin
27 Williams) out to Jerrold Avenue and shoot her and
28 leave her dead through the other two (Fain and

1 Joseph Diggs)." (RT 1349.) The prosecutor further
 2 repeatedly exhorted the jury to bring in a "guilty"
 3 verdict, not based on the evidence, but "BECAUSE
 4 they did it." (RT 1350.) THERE WAS NOT A
 5 SCINTILLA of evidence presented at trial that supports
 6 ANY of those false material statements. Any REASONABLY
 7 EFFECTIVE COUNSEL would have FERVENTLY objected to
 8 EACH of those IMPROPER STATEMENTS, PARTICULARLY,
 9 IN light of the fact that closing arguments ARE
 10 LIMITED to the issue IN the CASE and the EVIDENCE that
 11 HAS BEEN PRESENTED. Trial COUNSEL'S NON-objections
 12 to the FALSE and UNSUPPORTED material statements
 13 ALLOWED the prosecutor to: (1) ARGUE facts that ARE
 14 NOT SUPPORTED by the EVIDENCE IN the RECORD;
 15 (2) INJECT his PERSONAL beliefs and opinions;
 16 (3) INFLUENCE and INFLAME the jury's PREJUDICES
 17 AGAINST GREG; (4) ENCOURAGE the jury to DISREGARD
 18 THE COURT'S INSTRUCTION REGARDING INNOCENCE and
 19 GUILT; and (5) DIVERT the jury's ATTENTION from
 20 ITS DUTY to decide the CASE on the MERIT of the
 21 EVIDENCE PRESENTED AT TRIAL. MOREOVER, COUNSEL'S
 22 NON-objections GAVE CREDENCE to the prosecutor's
 23 BASELESS OPENING STATEMENTS.

24 Had counsel OBJECTED to the IMPROPER STATEMENTS,
 25 the objections would have undoubtedly resulted IN
 26 the judge ORDERING the jury to DISREGARD the
 27 STATEMENTS which would have PUT the jury on NOTICE
 28 that THEY ARE NOT ALLOWED to CONSIDER the IMPROPER

1 statements, and that alone could have changed
 2 the outcome of the trial.

3 Not only did Greg's trial counsel failed to
 4 object to the prosecutor's improper statements at
 5 trial; but, counsel also failed to challenge the
 6 validity and the legality of the overt acts in his
 7 motion to dismiss (Calif. Penal Code Sec. 995 motion.)
 8 (CT 70, 152; RT 27.) To support a crime of
 9 conspiracy to commit murder, the prosecution must
 10 prove the commission of an overt act by one or more
 11 of the parties engaged in the agreed upon conspiracy.
 12 In this case, Greg was only named in four overt
 13 acts in support of the conspiracy (Nos. 2, 4, 5, and 6.).
 14 Overt act No. 2 alleged that Greg took a photo and
 15 gave it to Wanda Fain; No. 4 alleged that Greg
 16 accompanied Fain to deliver a note; No. 5 alleged
 17 that Greg encourage Fain and Joseph Digg to
 18 murder Robin Williams; and No. 6 alleged that Greg
 19 and Fain resided at 126 Blythdale. (CT 1-4.)
 20 There was no finding of overt act No. 6; no
 21 evidence to support No. 5; and Nos. 2 and 4 fail
 22 because (1) there is no evidence of an agreement
 23 between Greg and anyone to commit murder and
 24 (2) they do not meet the legal requirement of an
 25 overt act. In light of the fact that Greg pled
 26 not guilty to the crimes accused (CT 9-11.), ANY
 27 reasonably effective counsel would have moved to
 28 challenge all evidence against his client in which the

1 the prosecution relies upon to obtain a conviction.
2 It is reasonable to assume that had counsel
3 challenged the overt acts, the prosecution would have
4 been forced to produce sufficient evidence to
5 support each act or run the risk of having one or
6 more acts dismissed. As shown herein, the
7 mentioned overt acts were either not acts in and
8 of themselves or unsupported or lacked finding.
9 Therefore, had counsel challenge the overt acts it
10 is more than likely that one or more or all of the
11 acts would have been dismissed which would have
12 further weaken the prosecution's case or resulted
13 in the entire case against GREG being dismissed,
14 because, the essence of a conspiracy lies within the
15 commission of an overt act.

16 Trial counsel also failed to use preemptory
17 challenge to excuse a potential bias juror from the
18 jury panel constitutes ineffective trial representation.
19 During voir dire, juror John Elwood was questioned
20 and answered as follows:

21 Mr. Fuetsch (counsel for co-defendant Linda Fair):

22 "Does anyone have a problem or would they have
23 a problem with following the instructions of the
24 Court even if the result that would be reached by
25 following the instructions of the Court were
26 contrary to your gut reaction in a case as serious
27 as that's charged here?"

28 1111

1 Prospective Juror: "I think I would have
2 a problem with it."

3 Mr. Fuetsch: "... could you explain what you
4 mean by you would have a problem with that?"

5 Prospective Juror: I believe there's a higher
6 authority than legal authority that is like moral
7 authority, and to follow like a set of rules rather
8 than more of a moral thing, I think I would be
9 hardpressed to follow the set of rules that are
10 outlined by law."

11 "... but I think if you misconstrue the
12 constitution or broaden its actual authority, then
13 I think that could be potentially wrong."

14 (RT 132-133.)

15 MR. ARIAN (Gees's counsel):

16 "Mr. Elwood, I heard you say something
17 about broadening the authority of the constitution.
18 Do you recall that comment?"

19 Prospective Juror: "I do."

20 MR. ARIAN: "I wonder if you could say any
21 more about that. I didn't get your complete
22 thought."

23 Prospective Juror: "My thought is a lot of,
24 let's say, somebody's on trial, the jurors sit
25 through the entire trial, they have a gut feeling
26 that these defendants are, let's say, guilty,
27 but a lot of circumstantial evidence has been
28 brought in and it's been found -- or a legal issue

1 has been brought up, a minor legal issue that speaks
2 to their innocence. You're supposed to think they're
3 innocent even though they're guilty, because it's
4 a legal argument and it takes precedence over how
5 you feel."

6 MR. ARIAN: "You're saying that as a juror your
7 gut reaction is very important and you're going to
8 pay a lot of attention to that?"

9 Prospective Juror: "If you've listened to all the
10 facts and you say, yes, they are innocent or guilty,
11 but some legal precedence makes you dismiss that,
12 then I have a big problem with that."

13 MR. ARIAN: "You might not be able to do that?"

14 Prospective Juror: "No, I would not."

15 MR. ARIAN: "Would that hold if the judge at
16 the close of the case instructed you that you were
17 to consider this evidence in a certain way and the
18 instructions of the judge went counter to the feelings
19 you just described."

20 Prospective Juror: "I really don't know sitting
21 here right now."

22 MR. ARIAN: "Would you have trouble with it?"

23 Prospective Juror: "I would have major problems."

24 Any reasonably effective counsel would have
25 used a preemptory challenge to excuse juror John
26 Elwood from the jury panel as a result of his
27 explicit or implicit allegiance to his "gut" feelings
28 opposed to the law and instructions given by

1 the court. Moreover, Elwood's declaration
 2 illustrates an abundance of juror misconduct (CT 451-
 3 452.), therefore, it is reasonable to assume that
 4 Elwood's reliance on his gut feelings during deliberations,
 5 rather than the Court's instructions, was influential
 6 in the jury's decision to find Greg guilty of the
 7 crimes charged, particularly since the verdicts were
 8 contrary to law.

9 Ineffective assistance of trial counsel falls under
 10 the Strickland's standard, and requires the showing
 11 that (1) counsel's performance was constitutionally
 12 defective, and (2) counsel's errors were so serious as
 13 to deprive the defendant of a fair trial, a trial
 14 whose result is reliable. Strickland v. Washington,
 15 466 U.S. 668, 687 (1984); Also, see United States
 16 v. Cronic, 466 U.S. 648 (1984).

17 In regard to Greg's ineffective assistance of
 18 trial counsel (IAC) claim; the state court finds
 19 that it is time-barred and/or conclusory
 20 allegations without documentation in support
 21 thereof. (See Exhibit-B at page #2, lines 10-25.)

22 The state court erred because California has no
 23 strict rule setting forth untimeliness in non-capital
 24 case. Moreover, it is the state burden to prove
 25 untimeliness. BENNETT v. Mueller, 322 F.3d 573
 26 (9th Cir. 2002). The Ninth Circuit has already
 27 established that California's state habeas time
 28 limits were not an adequate and independent

1 State ground to support procedural default where the
 2 time limits were not clear, well-established, and
 3 consistently applied prior to petitioner's filing of his first
 4 state habeas petition. BENNETT V. MUELLER, 322 F.3d 573,
 5 — (9th Cir. 2002); MORALEZ V. CALDERON, 85 F.3d 1387,
 6 1393 (9th Cir. 1996), cert. denied, 519 U.S. 1001 (1996); SEE
 7 ALSO, BENNETT V. MUELLER, 64 F.Supp.2d 1160, — (C.D.
 8 Cal. 2005). Under California's law, the preferred
 9 procedure to bring IAC claims is on habeas corpus RATHER
 10 than on direct appeal because it is based on facts that
 11 are not contain in the record on appeal. People V. TELLO,
 12 15 Cal. 4th 264 (1997). The United States Supreme Court
 13 holds that, as a matter of federal law, an IAC claim
 14 can be brought first on habeas corpus. MASSARO V.
 15 United States, 123 S. Ct. 1690 (2003). Arguably, EVEN
 16 if some sort of procedural default exists, the Ninth
 17 Circuit recognizes that an IAC claim can constitute
 18 cause to excuse procedural default. MANNING V. FOSTER,
 19 224 F.3d 1129, 1133; SMITH V. IDAHO, 392 F.3d 350.
 20 The Supreme Court also recognizes a federal habeas
 21 court may grant a petition for writ of habeas corpus
 22 even in the absence of a showing of cause for the
 23 procedural default. MURRAY V. CARRIER, 477 U.S.
 24 478, 496 (1986). Greg is entitled to equitable tolling
 25 because his IAC claim is newly discovered evidence
 26 that establishes a credible claim of actual innocence
 27 and a claim of fundamental constitutional error.
 28 Indeed, the Supreme Court has held that a claim

1 of actual innocence can be raised "to avoid a
 2 procedural bar to the consideration of the merits of
 3 a constitutional claim." Schlup V. Delo, 513 U.S. 298,
 4 326-27 (1995). Here, Gees was constitutionally
 5 represented by counsel during trial and on direct appeal
 6 and neither counsel indicated that an IAC claim
 7 existed; it was only through continuous and vigorous
 8 review and analysis of the court transcripts did the
 9 IAC claim materialized.

10
 11 The state court further asserts:

12 "Even assuming Petitioner's ineffective assistance
 13 of counsel claims are not time-barred, these
 14 claims fail because Petitioner has not provided
 15 any documentation to support his claims that
 16 his trial and appellate counsel provided
 17 ineffective assistance. It is well settled that
 18 a petition for writ of habeas should:
 19 (1) state fully, and with particularity, the
 20 facts upon which relief is sought; and
 21 (2) include copies of reasonably available
 22 documentary evidence supporting the claim,
 23 including pertinent portions of trial
 24 transcripts and affidavits or declarations.
 25 (People V. Duyall, (1995) 9 Cal. 4th 464, 474.)
 26 Conclusory allegations made without any
 27 explanation of their basis do not warrant
 28 relief."

First, the word "Should" is advisory language; not mandatory. Second, Gees's IAC claim is not based on "conclusory allegations without any explanation of their basis."

1 As demonstrated herein, as well as in the state
 2 habeas petition, Greg's trial counsel provided defective and
 3 ineffective trial representation by (1) failing to object
 4 to the prosecutor's numerous false and unsupported
 5 material statements at trial; (2) failing to challenge
 6 several questionable overt acts; and (3) failing to use
 7 preemptory challenge to excuse a bias juror from the
 8 jury panel. Greg has also shown that counsel's
 9 actions or omissions, individually or collectively,
 10 caused or contributed to his unlawful convictions
 11 because the record clearly and convincingly shows that
 12 there is not a scintilla of evidence connecting him to
 13 the shooting of Robin Williams and that he has always
 14 maintained his innocence and non-involvement in the
 15 crimes charged. The state court's failure to
 16 recognize trial counsel's actions and/or omissions
 17 as constitutional errors constitute an unreasonable
 18 application of clearly established federal law. See,
 19 e.g. Idaho V. Wright, 497 U.S. 805, — (1990).
 20 Indeed, an attorney's actions or omissions can be
 21 so sufficiently egregious as to amount to the sort of
 22 "extraordinary circumstances" that would justify the
 23 application of equitable tolling. Spitsyn V. Moore,
 24 345 F.3d 796, 800 and f.n. 1, 801-02 (9th Cir. 2003);
 25 Baldayague V. United States, 338 F.3d 145, 153
 26 (2nd Cir. 2003); United States V. Wynn, 292 F.3d
 27 226, 230 (5th Cir. 2002). Also, see, Calderon V.

1
2 United States District Court, 128 F.3d 1283, 1287-89
3 (9th Cir. 1997) ("[E]very relevant signal - from the Act's
4 plain language, to its legislative history, to its
5 structure - points in the same direction: Section 101's
6 one-year timing provision is a statute of limitations
7 subject to equitable tolling, not a jurisdictional bar").

8 The federal court has to consider a habeas corpus
9 petition if there is a claim of fundamental
10 miscarriage of justice. Schlup V. Delo, 513 U.S. 298,
11 — (1995). Moreover, since Greg has shown
12 "cause and prejudice," the federal court can rule on
13 the merits of this claim. Coleman V. Thompson, 501
14 U.S. 722, 749 (1991); Reed V. Ross, 468 U.S. 1, 11
15 (1984); Engle V. Isaac, 456 U.S. 107, 129 (1982);
16 Wainwright V. Sykes, 433 U.S. 72, 87 (1977).

17 And because Greg has shown that counsel's errors had a
18 "substantial and injurious effect or influence in
19 determining the jury's verdict"; the errors are not
20 harmless. Brecht V. Abrahamson, 507 U.S. 619, 637
21 (quoting Kotteakos V. United States, 328 U.S. 750, 776 (1946)).

22 As illustrated, Greg's right to effective assistance
23 of trial counsel, as guaranteed by the Fifth, Sixth,
24 and Fourteenth Amendments of the United States
25 Constitution, was violated.

26 Based on the above, the Court must grant Greg
27 equitable tolling on this claim, and any other relief
28 the Court deems fair and just.

C. Ineffective Assistance Of Appellate Counsel

2 Greg's appellate counsel provided defective and
3 ineffective representation on direct appeal when
4 counsel failed to raise the following non-frivolous claims
5 on appeal: (1) prosecutorial misconduct (as set
6 forth herein); (2) ineffective assistance of trial
7 counsel (as set forth herein); (3) Greg's convictions
8 are based on less than proof beyond a reasonable
9 doubt of every element of the crimes charged (as set
10 forth below); and (4) juror failed to respond honestly
11 to the defense counsels' questions during voir dire
12 (as set forth below).

13 NONE of THESE CLAIMS ARE FRIVOLOUS AND ANY
14 REASONABLY EFFECTIVE APPELLATE COUNSEL WOULD HAVE
15 RAISED EACH OF THE MENTIONED CLAIMS ON DIRECT
16 APPEAL.

Had appellate counsel incorporated the mentioned non-frivolous claims into the appellant's brief or at least filed a motion in the Court of Appeal to expand his appointment in order to file and consolidate a state habeas corpus petition to work in conjunction with and in support of the appellant's brief the appeal outcome could have been different.

24 Greg's appellate counsel raised a claim of
25 insufficiency of evidence on direct appeal, inter
26 alia. Such a claim in and of itself screams
27 ineffective assistance of trial counsel and/or
28 prosecutorial misconduct due to its fundamental

1 miscarriage of justice nature. Counsel's failure to
 2 pursue a claim of ineffective assistance of trial
 3 counsel and/or prosecutorial misconduct on appeal
 4 deprived the insufficiency of evidence claim of
 5 crucial evidentiary support thereof.

6 The proper standard for evaluating a claim
 7 that appellate counsel was ineffective is that
 8 enunciated in *Strickland v. Washington*, 466 U.S. 668
 9 (1984). See, *Smith v. Robbins*, 528 U.S. 259, 285
 10 (2000).

11 The state court denied this claim, ineffective
 12 assistance of appellate counsel, on the same grounds
 13 in which it denied the ineffective assistance of trial
 14 counsel claim. (See Exhibit -B at pages 2-3.)
 15 The state court ERRED in its denial of this claim
 16 as well. And because the state court used the
 17 same legal arguments and case laws to deny the
 18 ineffective assistance of trial counsel and
 19 ineffective assistance of appellate counsel claim;
 20 GREG supports this claim by reiterating and
 21 re-alleging the same facts, arguments and case laws
 22 as previously submitted in his ineffective assistance
 23 of trial counsel's claim set forth herein at
 24 pages 23-27 as if fully stated.

25 The non-frivolous claims mentioned herein, if
 26 only raised on appeal, would have provided evidentiary
 27 support for the claims raised in the appellant's brief
 28 and contributed to the perseverance of a successful

1 appeal.

2 Notwithstanding the state court's total denial of
 3 Greg's ineffective assistance of appellate counsel claim,
 4 the court also finds that Greg's claim that (a) his
 5 convictions are based on less than proof beyond a
 6 reasonable doubt of every element of the crimes
 7 charged and (b) juror gave false and/or misleading
 8 statements during voir dire are procedurally barred
 9 because they were raised and rejected on appeal.²
 10 (See Exhibit -B at page #2, lines 5-9.) The state
 11 court erred. These claims are being brought for
 12 the very first time, and properly so, because Greg's
 13 appellate counsel was ineffective in failing to raise
 14 them on direct appeal. In re Winship, not Jackson
 15 v. Virginia, 443 U.S. 307 (1979), set forth the
 16 standard in determining whether a petitioner was
 17 convicted on less than proof beyond a reasonable
 18 doubt of every element of the crimes charged.
 19 In re Winship, 397 U.S. 358 (1970); Also, see,
 20 Leavitt v. Vasquez, 875 F.2d 260 (9th Cir. 1989).

22 2 On direct appeal, Greg's appellate counsel
 23 raised an "Insufficiency of Evidence" claim regarding
 24 the conspiracy to commit murder conviction and used
Jackson v. Virginia, 443 U.S. 307 (1979) in support
 25 thereof. And raised jury misconduct claims of:
 26 consulting bus schedules, disobeying instructions, and
 27 a juror's reliance on his personal knowledge regarding
 28 the effects of cocaine on memory. None of these
 claims are being raised here.

1 And a claim of whether a juror gave false and/or
 2 misleading statements during voir dire is determined
 3 under Tevis v. Dowd. Tevis v. Dowd, 366 U.S.
 4 717 (1961). The entire basis for the state court's
 5 denial of these claims were a mistake.

6 The Ninth Circuit recognizes that, where the
 7 state court mistakenly fails to consider a habeas claim
 8 that has been properly raised, the state court has not
 9 "adjudicated" that claim as required by the AEDPA,
 10 and therefore the state denial is entitled to no
 11 deference at all on federal habeas corpus. Pirtle v.
 12 Morgan, 313 F.3d 1160 (9th Cir. 2002). Other circuits
 13 similarly agree, see, Appel v. Horn, 250 F.3d 203,
 14 210 (3rd Cir. 2001); Mercadel v. Cain, 179 F.3d 271,
 15 274-75 (5th Cir. 1999); Chadwick v. Janecka, 312 F.3d
 16 597, 605 (2nd Cir. 2002); Fortini v. Murphy, 257 F.3d
 17 39 (1st Cir. 2001). Federal courts can consider a
 18 habeas corpus petition if there is a claim of
 19 fundamental miscarriage of justice. Schlup v. Delo,
 20 513 U.S. 298 (1995). Moreover, since Greg has
 21 shown "cause and prejudice," the federal court can
 22 rule on the merits of this claim. Coleman v.
 23 Thompson, 501 U.S. 722, 749 (1991); Reed v. Ross,
 24 468 U.S. 1, 11 (1984); Engle v. Isaac, 456 U.S. 107,
 25 129 (1982); Wainwright v. Sykes, 433 U.S. 72,
 26 87 (1977).

1 Appellate counsel's failure to raise the mentioned
2 non-frivolous claims on appeal deprived Gregg of
3 effective representation of counsel on appeal as well as
4 the right to prove that his convictions are based on
5 less than proof beyond a reasonable doubt of every
6 element of the crimes charged and to prove that a
7 juror gave false and/or misleading statements during
8 voir dire, all in violation of his Fifth, Sixth, and
9 Fourteenth Amendments of the United States
10 Constitution.

11 Based on the above, the Court must grant Gregg
12 equitable tolling on each and every claim stated
13 herein, as well as any other relief the Court deems
14 fair and just.

16 1. Gregg Exercised Due Diligence In Filing
17 His Petition For Writ Of Habeas Corpus

18
19 Since Gregg's wrongful and unlawful convictions,
20 he has been suffering from mental and psychological
21 problems. (SEE: Exhibit - H; exact copy of some of
22 Gregg's mental health records.) Despite Gregg's
23 psychiatric condition, he has been continuously and
24 vigorously conducting an analytical review of his
25 court and reporter's transcripts in an effort
26 to discover meritorious claims to support his

1 UNLAWFUL CONVICTION ALLEGATIONS. In 2007, GREG
 2 LEARNED THAT HIS RIGHT TO A FAIR TRIAL AND DUE
 3 PROCESS, AS GUARANTEED UNDER THE FIFTH, SIXTH AND
 4 FOURTEENTH AMENDMENTS OF THE UNITED STATES
 5 CONSTITUTION, WAS VIOLATED AS A RESULT OF INEFFECTIVE
 6 ASSISTANCE OF TRIAL COUNSEL; INEFFECTIVE ASSISTANCE OF
 7 APPELLATE COUNSEL; AND PROSECUTORIAL MISCONDUCT.

8 IMMEDIATELY UPON KNOWLEDGE THEREOF, ON APRIL 26,
 9 2007, GREG FILED A STATE PETITION FOR WRIT OF HABEAS
 10 CORPUS REGARDING THE MENTIONED CLAIMS, AMONG OTHERS,
 11 IN THE SUPERIOR COURT OF SAN FRANCISCO WHICH WAS
 12 DENIED; HE THEN FILED AN EXACT COPY OF THAT PETITION
 13 IN THE COURT OF APPEAL WHICH WAS DENIED ON JULY 5,
 14 2007, AND IN THE SUPREME COURT OF THE STATE OF
 15 CALIFORNIA WHICH WAS DENIED ON JANUARY 30, 2008.

16 (SEE: EXHIBITS A THROUGH F; AN EXACT COPY OF EACH
 17 PETITION AND RESPONSES THERETO. ALSO, SEE, GREG'S
 18 DECLARATION ATTACHED HERETO AT #2.) THEREFORE,
 19 GREG EXHAUSTED ALL CLAIMS IN THE STATE COURTS AND IS
 20 ENTITLED TO SEEK VINDICATION OF HIS UNLAWFUL
 21 CONVICTIONS VIA FEDERAL WRIT OF HABEAS CORPUS.

22 AS DEMONSTRATED, GREG EXERCISED DUE DILIGENCE
 23 IN FILING HIS PETITION FOR WRIT OF HABEAS CORPUS IN
 24 STATE AND FEDERAL COURTS AS REQUIRED UNDER
 25 ESTABLISHED LAW. (28 U.S.C. SEC. 2244(d)(1)(D)
 26 (SUPP. 1998). ALSO, SEE, Dobbs V. Zant, 506 U.S.
 27 357 (1993).) MOREOVER, THE PETITION, ALONG WITH

28

THESE PAPERS AND ACCOMPANY EXHIBITS, SHOWS
 "EXTRAORDINARY CIRCUMSTANCES" THAT, IN THE INTEREST
 OF JUSTICE, REQUIRES EQUITABLE TOLLING. Lott v. Mueller,
 304 F.3d 918, 925 (9th Cir. 2002) (EQUITABLE TOLLING
 REQUIRES SHOWING OF "EXTRAORDINARY CIRCUMSTANCES,"
 BUT "THE ISSUE OF WHEN GRAVE DIFFICULTY MERGES
 LITERALLY INTO 'IMPOSSIBILITY' SHOULD BE RESOLVED IN
 [PETITIONER]'S FAVOR" SO AS TO ENSURE THAT "PROCEDURAL
 UNCERTAINTIES [DO NOT] UNREASONABLY SNUFF OUT A
 CONSTITUTIONAL CLAIM"); United States v. Zuno-Arce,
 25 F. Supp. 2d 1087, 1099-1102 (C.D. Cal. 1998), aff'd,
 309 F.3d 1095, 1102 (9th Cir. 2000), amended,
 345 F.3d 1108 (9th Cir. 2001), stayed, 371 F.3d
 (9th Cir. 2001) (mem.), overruled in part on other
 grounds, ("extend[ing] the miscarriage of justice
 gateway as a means of considering evidence and
 constitutional claims otherwise procedurally barred
 by the AEDPA's period of limitations" because
 foreclosure) [of] a claim of constitutional violation
 WHERE THERE HAS BEEN A COLORABLE SHOWING OF FACTUAL
 INNOCENCE WOULD LIKELY CONSTITUTE A DUE PROCESS
 VIOLATION OR AN IMPROPER SUSPENSION OF HABEAS
 CORPUS RELIEF").
 HERE, GREG ALLEGES AND MAINTAINS THAT HIS
 PETITION FOR WRIT OF HABEAS CORPUS CONTAINS NEWLY
 DISCOVERED EVIDENCE AND A "CLAIM OF ACTUAL INNOCENCE"
 AND SHOWS THE CAUSE AND PREJUDICES ASSOCIATED

1 with the fundamental constitutional errors and the
 2 miscarriage of justice that resulted in his unlawful
 3 convictions. The Supreme Court has recognized the
 4 need for the issuance of a writ of *habeas corpus*
 5 where an innocent person's liberty or life may be
 6 forfeited because of unfair proceedings. Bousley V.
 7 United States, 523 U.S. 614, 620 (1980) ("one of the
 8 principal functions of *habeas corpus* [is] "to assure
 9 that no man has been incarcerated under a
 10 procedure which creates an impermissibly large
 11 risk that the innocent person will be convicted.");
 12 O'Neal V. McAninch, 513 U.S. 432, 442 (1995)
 13 ("basic purposes underlying the writ of *habeas*
 14 *corpus*" include curing "error of constitutional
 15 dimension - the sort that risks an unreliable trial
 16 outcome and the consequent conviction of an
 17 innocent person"); Schlup V. Delo, 513 U.S. 298,
 18 326 (1995) ("Indeed, concern about the injustice
 19 that results from the conviction of an innocent
 20 person has long been at the core of our criminal
 21 justice system."); also, United States V. Barron,
 22 172 F.3d 1153, 1161 (9th Cir. 1999)(en banc)
 23 ("incorporates the fundamental principle that it is
 24 NEVER just to punish a man or woman for an
 25 innocent act").
 26
 27
 28

1 Based on the above, the Court must grant
2 GREG equitable tolling on this claim because he
3 EXERCISED due diligence in filing his petition for
4 writ of habeas corpus; and ANY OTHER RELIEF the
5 Court deems APPROPRIATE.

6

7

Conclusion

8

9 As demonstrated, "Good Cause" exists to
10 support GREG's filing of a late petition for a
11 writ of habeas corpus due to newly discovered
12 evidence and a claim of actual innocence.

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Declaration

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DATED: 7/8/08

Respectfully submitted,
Gregory L. Brown
GREGORY L. BROWN,
Petitioner

Declaration of Service

CASE NAME : Gregory L. Brown V. Ken Clark, Clerk, et al.

CASE NO. : _____

I declare :

On July 8, 2008, I served the attached Greg's Declaration And Memorandum In Support Of His Petition For Writ Of Habeas Corpus by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the prison mail collection system at SATF-CORCORAN State Prison, in California, addressed as follows :

Clerk, U.S. District Court
Northern District of California
450 Golden Gate Ave., 16th Floor
San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 7/8/08

Gregory L. Brown
Gregory L. Brown

Gregory L. Brown
J-12241 (C8-104) C8/24
P.O. Box 5246
Concord, CA 94524



AMERICAN MAIL
\$ 09.400
TO U.S. ZIP CODE 93212

H. O. H. - CLT 7/7/08

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